

1                         UNITED STATES DISTRICT COURT  
2                         NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION  
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5                         IN RE: HIGH-TECH EMPLOYEE      )  
6                         ANTITRUST LITIGATION              ) NO. 11-CV-2509-LHK  
7                         -----  
8  
9                         HIGHLY CONFIDENTIAL

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11                        VIDEOTAPED DEPOSITION OF EDWARD LEAMER

12                        San Francisco, California

13                        Friday, October 26, 2012

14                        Volume I

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20                        Reported by:

21                        ASHLEY SOEVYN

22                        CSR No. 12019

23                        Job No. 1545691

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25                        PAGES 1 - 476

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1 did you apply a standard which was that it had to be 08:18:24  
2 proof common that actually shows that the agreements 08:18:27  
3 reduced the compensation? 08:18:30  
4 A. It's interesting that you raise this 08:18:31  
5 question, because I think I've actually demonstrated 08:18:33  
6 I've met the higher standard of showing that the 08:18:37  
7 non-compete agreements reduced compensation. 08:18:40  
8 Q. And what is the basis for your statement 08:18:44  
9 that you've met the higher standard? 08:18:46  
10 A. Well, there are three legs of the 08:18:48  
11 evidential stool, if you want to put it that way. 08:18:52  
12 First, is the documentary growth evidence, 08:18:55  
13 and, secondly, is the conceptual framework standard 08:18:58  
14 economic theory, and the third is the data that I've 08:19:01  
15 explored. 08:19:04  
16 Q. Now, your analysis has two steps, I take it 08:19:08  
17 from paragraph 10. First, whether "there is proof 08:19:12  
18 common to each proposed class showing the reduction 08:19:15  
19 of competition -- compensation"? 08:19:19  
20 A. That's correct. 08:19:20  
21 Q. And then the second, "Is there a reliable 08:19:20  
22 Class-wide or formulaic method capable of 08:19:23  
23 quantifying the amount of suppressed compensation 08:19:27  
24 suffered by each class member." That should 08:19:30  
25 probably be "each class member"? 08:19:34

1	MR. GLACKIN: Objection, vague,	08:19:35
2	mischaracterizes.	08:19:37
3	BY MR. PICKETT:	08:19:38
4	Q. That's the second part of the analysis?	08:19:38
5	A. I also don't accept their word of member,	08:19:42
6	that phrase should not be added. I was asked to do	08:19:45
7	it to answer the question as it's phrased here.	08:19:50
8	Q. Let's do this -- (Cross-talking.)	08:19:53
9	A. With this question, if that's the -- if	08:19:55
10	that's what you're asking me, was I provided this	08:19:58
11	question, the answer is yes.	08:20:01
12	Q. So let's go back. It's a two-part analysis	08:20:02
13	as reflected in 10a and 10b of your report,	08:20:05
14	correct?	08:20:09
15	A. That's correct.	08:20:09
16	Q. And as to whether you were looking at	08:20:10
17	quantifying the amount of suppressed compensation	08:20:14
18	suffered by a particular group, you're saying you	08:20:16
19	only looked at whether each class -- you could	08:20:20
20	quantify the amount of suppressed compensation	08:20:24
21	suffered by each class, not each class member?	08:20:27
22	A. That's correct.	08:20:31
23	Q. So you haven't looked at whether there is a	08:20:32
24	class-wide method capable of quantifying the amount	08:20:34
25	of suppressed compensation suffered by each class	08:20:38

1	member?	08:20:41
2	MR. GLACKIN: Objection, vague.	08:20:41
3	THE WITNESS: That was not my task.	08:20:44
4	BY MR. PICKETT:	08:20:47
5	Q. So that would be, "Yes, I have not looked	08:20:47
6	at that"?	08:20:50
7	A. That's correct.	08:20:51
8	Q. And when you looked at the method capable	08:20:56
9	of quantifying the amount of suppressed compensation	08:21:02
10	suffered by each class, is that reduction an	08:21:05
11	aggregate number for each class?	08:21:14
12	A. Well, I provided numbers defendant by	08:21:20
13	defendant.	08:21:25
14	Q. Right. Year by year a percentage --	08:21:25
15	(Cross-talking.)	08:21:27
16	A. Year by year -- (Cross-talking.)	08:21:27
17	Q. And that was year by year then, an	08:21:29
18	aggregate number for the whole class?	08:21:31
19	A. Defendant by defendant.	08:21:35
20	Q. And you haven't examined whether individual	08:21:40
21	class members, defendant by defendant, year by year,	08:21:45
22	were impacted equally?	08:21:50
23	A. Well, in answering that question, I have	08:21:54
24	done a little bit of work on the -- on	08:21:55
25	distinguishing members of the class, if you look at	08:22:01

1 my regression equation, there is an interaction 08:22:04  
2 between the conduct period and the age. And age is 08:22:07  
3 an individual specific variable, so the regression 08:22:10  
4 is capable of saying something about individuals, 08:22:13  
5 but that was not my task. I was using that age 08:22:17  
6 variable as a way of controlling for the age 08:22:21  
7 compositional difference between the firms. I was 08:22:23  
8 provided a -- I understood my task was to provide 08:22:27  
9 damages firm by firm, year by year. 08:22:29

10 Q. Right. And the damages that you provided, 08:22:33  
11 say, in a given year, 1.6 percent under compensation 08:22:35  
12 for a particular defendant in a particular year, 08:22:39  
13 that's just an average under compensation for all of 08:22:43  
14 the affected class members within that year and 08:22:46  
15 within that defendant? 08:22:49

16 A. That's correct. 08:22:52

17 Q. Going back to paragraph 10, the two 08:23:03  
18 steps -- 08:23:05

19 (Donald Falk, Esq., enters conference room.) 08:23:06

20 BY MR. PICKETT: 08:23:09

21 Q. -- are both steps necessary to your opinion 08:23:09  
22 of common proof? 08:23:12

23 MR. GLACKIN: Objection, vague. 08:23:14

24 THE WITNESS: Well, there is a reference to 08:23:17  
25 common proof in part a, and part b does not refer to 08:23:19

1 STATE OF CALIFORNIA ) ss:

2 COUNTY OF MARIN )

3  
4 I, ASHLEY SOEVYN, CSR No. 12019, do hereby  
5 certify:

6 That the foregoing deposition testimony was  
7 taken before me at the time and place therein set  
8 forth and at which time the witness was administered  
9 the oath;

10 That the testimony of the witness and all  
11 objections made by counsel at the time of the  
12 examination were recorded stenographically by me,  
13 and were thereafter transcribed under my direction  
14 and supervision, and that the foregoing pages  
15 contain a full, true and accurate record of all  
16 proceedings and testimony to the best of my skill  
17 and ability.

18 I further certify that I am neither counsel for  
19 any party to said action, nor am I related to any  
20 party to said action, nor am I in any way interested  
21 in the outcome thereof.

22 IN THE WITNESS WHEREOF, I have transcribed my  
23 name this 29th day of October, 2012.  
24

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25 ASHLEY SOEVYN, CSR No. 12019

**Edward Leamer Deposition Errata**

*In Re High-Tech Employee Antitrust Litigation*, United States District Court, Northern District of California, San Jose Division, Case No. 11-CV-2509-LHK.

Witness: Edward Leamer

Date of Deposition: October 26, 2012 at the offices of Lieff, Cabraser, Heimann & Bernstein, LLP, 275 Battery Street, 29th Floor, San Francisco, CA 94111

pg	row	reads	should read	
11	17	columnists	economists	
22	12	growth evidence	evidence	
27	6	I regarded me much	I regarded to be much	
28	12	framework to	framework refers to	
33	25	movement has	movement that has	
36	22	of data set	of the data set	
37	3	to me	for me	
37	10	not	now	
39	23	compensation	under compensation	correction
41	5	conversation	compensation	
41	24	would you be	would be	
43	19	you got	you've got	
43	19	you	you've	
43	25	an education	education	
44	22	I supposed would put a	I suppose I would study a no, I have not examined the	
50	14	no	records of non-defendants	correction
50	23	haven't	have	
50	24	was	were	
51	24	suggests	suggest	
53	4	their	the	
53	22	that you	that	
55	6	different from	different for	
56	2	to have record	to have a record	
56	21	conversation	compensation	
65	4	supported	supportive	
65	14	supported	supportive	
69	11	idea	ideal	
70	24	sentence so	sentence	
73	23	this	these	

pg	row	reads	should read	
74	10	he	you	
74	25	that	the	
75	4	are	were	
75	4	is about	about	
80	11	agreements	data	correction
82	12	consummate	compensation	
83	7	No.	No. Not the data, but I did rely on the fact of benchmarking.	correction
83	20	damn	damage	
85	2	rated	raided	
93	24	on	delete "on"	correction
97	20	sheet		unclear reference, inaudible
101	8	control	controls	
101	24	underline	underlie	
102	13	conversation	compensation	
110	1	Stiglet's	Stiglitz	
110	3	there's quotation	there's a quotation	
111	19	them	the	
127	13	competitor	competitive	
131	5	their	the	
131	18	about	is about	
134	20	unix	image	
142	21	But a catch it all and ask	But it catches it all and asks	
142	22	conversation	compensation	
142	24	to unusual	to be unusual	
146	16	conversation	compensation	
148	1	their	the	
149	1	and	of	
160	7	as a reel of	as they accumulate	
162	3	data	date	
171	3	in regression on	the regression is	
174	3	issues are added to	included	clarification
174	24	communicator	indicator	clarification
175	17	aggression	regression	
183	21	indicate	indicating	
184	24	that remember	that I remember	
190	4,6	college	colleagues	
195	23	graphs on kinds	graphs on all kinds	clarification
196	7	your	this	clarification

pg	row	reads	should read
197	19	sufficiently "illuminated" information	efficiently
198	3	reduces outcome set	"limited"
198	14	that's talk	that talk
202	18	employment	employer
203	5	are	R
209	23	or	of
212	4	a enterprise	an enterprise
214	13	the iceberg	the R squared
214	19	rebuiliding	variability
216	11	deep kind of variable	dependent variable
220	4	consequence	consequentiality
221	14	were	no obvious correction, inaudible
221	15	carried	
222	6	conversation	
222	18	conversation	
223	13	A	
228	6	defender	
233	11	log ryhthmic	
233	19	personality	
233	22	log ryhthmic	
235	4	the compensation 5	
237	19	their	some
238	9	definitive	consequence
238	11	and	of
240	16	scattered	scatter
240	20	scattered	scatter
240	23	scattered	scatter
		Certainly have to state a	You certainly have the STATA code
243	8	code	
245	20	its	the
249	13	rest	regress
252	25	senior	substantial
256	5	across	that cross
257	19	compute this to study.	prepare this display.
259	21	interregression or	whether the
260	17	or end	within
261	24, 25	Despite	The Spike
264	17	those	that

pg	row	reads	should read
266	23	so material	immaterial
272	7	I got	I've got
277	5	on	of a
289	4	Where you	"Whereas" before "where you"
289	6	joint	any
290	24	large	log
292	Line 8	is	in the
296	15-17	the increase in the equality the"-- an" in "the" equality	
297	3	or	like
298	15	terms	titles
302	1	to defend the	of the dependent
302	2	to defend the	of the dependent
303	7	my economist	of economists
311	9	us	it
311	15	diversion of the mean	reversion to the mean
315	10	a tax	attacks
316	21	would, it's	really, was
316	22	careful	carefully
318	17	perceives	pursues
319	11	use in models	use models
320	10	just	this
321	10	that	the
322	17	a defending variable	the dependent variable
324	18	as a	not as a
325	9	symptomatic restraint nothing in the air, would	symptomatic
329	3	rather	nonlinearity, ought to
329	5	progression of	regression on
329	14	corroboration	collaboration
334	23	I got	I've got
337	6	absolute	absolutely
337	8	estimate	estimated
338	12	contact	conduct
339	5	intervening	illuminating
340	15	availability	variability
340	22	websites	activity
341	1	and these	by these
342	8	equation	in the equation
342	11	across	And caught
344	3	have	had

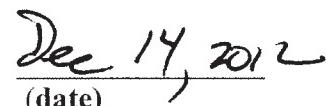
pg	row	reads	should read
345	14	factual	Black-Scholes
346	14	textural	textual
346	22	times	time
358	5	a	the
358	6	is	this
362	7	you got	you've got
364	5	originating	variation
364	7	the heading they used	variation
364	23	inaccuracy	in accuracy
366	8	sensitive	sensitivity
366	10	imploring	reporting
366	11	the risk of	there was
367	13	operations	observations
367	23	firm	firms
368	4	desperate	disparate
372	15	getting	putting
373	16	shot	plot
374	15	experience	experiments
376	20	pend	depend
379	25	other	are the
380	19	liquidation	manipulation
380	20	doing damage	doing "a" damage
380	25	Okay	Delete word
383	20	you got	you've got
384	10	researched	estimated
385	13	phase	base
387	15	a few	two
392	20	estimate	estimates
392	22	there's a	the
392	2	of	deviation
394	5	intercell	intercept
394	19	statistic	statistically
394	21	you got	you've got
398	14	competition	composition
401	22	a cold	a lot of cold
406	18	I done	I've done
410	14	Increase in	An infrequent
410	15	Change	thing
411	14	conflict	construct
416	10	suppose	suppose be

pg	row	reads	should read	
416	13	broader that	value that	
417	line 5	our lawyer	Al Roth	
417	line 6	that	one	
420	6	included the fact	include the possibility	clarification
421	2	competition	composition	
422	14	competition	compensation	
424	10	reduced	reached	
425	6	a search for a	a symptom of the	
426	3	of the world	world	
431	7	where	when	
434	10	and also	can also	
436	7	affect	effect	
444	10	employees	employers	
447	9	punched	pinched	
450	13	not	delete "not"	
451	11	It's set	it sets	
451	11	in	delete "in"	
462	5	Is that	That is	
464	5	fraud	flawed	

Subject to the changes above, I certify that the transcript is true and correct.



Edward Leamer



(date)